

## **DEFENDANT’S MOTION TO DISMISS**

Defendant Mrs. Fields Famous Brands, LLC (“Mrs. Fields”) respectfully moves to dismiss the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The grounds supporting the motion are set forth below and in the accompanying memorandum.

1. This case arises out of a licensing agreement between plaintiff Taste of Nature (“TON”) and defendant Mrs. Fields, whereby Mrs. Fields gave Plaintiff the exclusive right to manufacture and market Mrs. Fields branded products to retailers. After Mrs. Fields terminated the agreement for cause pursuant to its terms, Plaintiff filed this action seeking a declaratory judgment that it did not breach the agreement and alleging a breach of the contract. Both claims should be dismissed.

2. First, the declaratory judgment claim in Count I should be dismissed because it is an inappropriate vehicle here for what is in essence a breach of contract claim. There is no dispute that Mrs. Fields had the absolute right to terminate the agreement, it did so, and the only

question is whether it had the right to do so for cause. That is a claim for breach of contract, and should not be the subject of a declaratory judgment claim.

3. Second, Plaintiff has pled itself out of its breach of contract claim. Plaintiff admits that it received written notice of default of the audit and discount sales terms on April 1, 2022. The unambiguous terms of the License Agreement afforded Mrs. Fields the right to audit Plaintiff's books and records to confirm compliance with the Agreement. In the exhibits attached to and incorporated into the Complaint, Plaintiff admits that it refused to provide requested books and records of Plaintiff's invoices, sales, inventory, payment history and purchase orders relating to the products it sold under the Mrs. Fields license. Plaintiff further admittedly failed to cure that audit requirement default within 30 days of the April 1, 2022 written notice, and thus Mrs. Fields properly terminated for cause on May 31, 2022.

### CONCLUSION

For the foregoing reasons, Defendant Mrs. Fields respectfully requests that this Court dismiss Plaintiff's Complaint with prejudice.

Respectfully submitted,

s/ Nancy A. Temple  
Nancy A. Temple

One of Defendant's Attorneys

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that on August 22, 2022, I electronically filed the foregoing **DEFENDANT'S MOTION TO DISMISS** with the Clerk of the Court using the CM/ECF system which sent notification of filing to all counsel of record.

/s/ Nancy A. Temple

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